

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL Nos.53 and 55 of 2004

WRIT APPEAL No.53 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 21-10-2002 in W.P.No.15652 of 2002 on the file of the High Court.)

Between:

- 1.P.Shyam Rao, S/o P.Narasimha Rao,
R/o. H.No.8-3-234, L.N.Nagar, Yousufguda, Hyderabad.
- 2.U.Ramulu, S/o Bandappa,
R/o.H.No.6-3-647/A, Punjagutta, Hyderabad.
- 3.Ravi Shankar, S/o late A.Tukaram,
R/o.H.No.8-3-228-678, Karmika Nagar, Hyderabad.
- 4.G.Srinivasa, S/o G.Jananath,
R/o. H.No.8-3-234/276, L.N.Nagar, Yousufguda, Hyderabad.
- 5.Mir Jaffar Ali, S/o MSA Razvi,
R/o. H.No.GH-6, Block C, New Jyothi Nagar, Yousufguda,
Hyderabad.
- 6.Md.Jaleel, S/o Ali Mohd,
R/o H.No.8-3-234/64, L.N.Nagar, Yousufguda, Hyderabad.
- 7.S.Jagdish, S/o Venkat Rao,
R/o. H.No.8-3-234/30/12, L.B.Nagar, Yousufguda, Hyderabad.
- 8.Md.Hussain, S/o Medhi Hussain
R/o. H.No.8-3-234/A44, L.N.Nagar, Yousufguda, Hyderabad.
- 9.G.Raghu, S/o G.Jaganath
R/o.H.No.8-3-237/7/79, L.N.Nagar, Yousufguda, Hyderabad.
- 10.Md.Sabeer, S/o Md.Jahangeer
R/o. 8-3-237/7/79, L.N.Nagar, Yousufguda, Hyderabad.
- 11.M.Yawar Ali, S/o Shujath Ali,
R/o. H.No.16, Borabonda, Allapur, Hyderabad.
- 12.Md.Saleem, S/o Shabbir,
R/o. Borabonda, Hyderabad.
- 13.Md.Jeelani, S/o. late Mohd.Ali,

R/o. H.No.8-3-237/64/13, L.N.Nagar, Yousufguda, Hyderabad.

14.Md.Naseeruddin, S/o.Mohd.Khainuddin,

R/o H.No.8-3-234/15/2, L.N.Nagar, Yousufguda, Hyderabad.

15.Giridhar, S/o.Swamy Das,

R/o.8-3-234/15/2, L.N.Nagar, Yousufguda, Hyderabad.

16.Zaffar Ali, S/o.Marroof Ali,

R/o.8-3-234, L.N.Nagar, Yousufguda, Hyderabad.

17.Abdul Aziz, S/o.Marroof Ali,

R/o.8-3-678/925, L.N.Nagar, Yousufguda, Hyderabad.

18.Jammel Ahmed, S/o Jaleel Ahmed,

R/o H.No. Rahmath Nagar, Yousufguda, Hyderabad.

19.Mohd.Amjad Pasha, S/o Mohd.Masood Pasha,

R/o. 8-3-237/7/79, L.N.Nagar, Yousufguda, Hyderabad.

20.Satish, S/o. Achaiah,

R/o.8-3-237/681/12A, L.N.Nagar, Yousufguda, Hyderabad.

21.K.S.Kumar, S/o. N.Kumar,

R/o. 8-3-234/36C, L.N.Nagar, Yousufguda, Hyderabad.

22.K.Satyanarayan, S/o. K.Simhachalam,

R/o.8-3-255/141/A, Yadagiri Nagar, Yousufguda, Hyderabad.

23.Ch.Krishna, S/o. Venkateswara Rao,

Yousufguda, Hyderabad.

24.O.Nagaraj, S/o Balaram,

R/o. H.No.8-3-234/1, Yousufguda, Hyderabad.

25.Habib Hussain, S/o.late Habib Abubakar,

R/o. H.No.8-3-234/1, Yousufguda, Hyderabad.

26.Shaik Mastaan, S/o Shaik Jannu,

R/o. H.No.8-3-228/678/1009/241, Karmika Nagar, Yousufguda,

Hyderabad.

27.K.Arvind, S/o. Narsing Rao,

H.No.8-3-237/38, L.N.Nagar, Yousufguda, Hyderabad.

28.Sunil Kumar, S/o Ramaswamy,

R/o.L.N.Nagar, Yousufguda, Hyderabad.

29.D.Seenu, S/o. Dara Swamy,

R/o. Plot No.17/A, Jubilee Hills, Hyderabad.

30.Md.Ghouse, S/o.Md.Mehboob Ali,

H.No.5-7-84, Nampally, Hyderabad.

31.Iqbal, S/o. Ali Hussain,

R/o. H.No.8-3-228/678/1248, Sri Ram Nagar, Rahmat Nagar,

Hyderabad.

32.Nasri Khan, S/o. Hussiah Khan,

R/o.5-7-8/3, Nampalli, Ek Minar Road, Hyderabad.

.... APPELLANTS

AND

1.Municipal Corporation of Hyderabad, rep., by its Commissioner, Circle V, Khairatabad, Hyderabad.

2.The Dy.Commissioner of Police, South Zone, Panjagutta, Hyderabad.

3.Hyderabad Urban Development Authority, Hyderabad rep., by its Chairman.

.....RESPONDENTS.

Counsel for the Appellants : Mr.K.R.PRABHAKAR

Counsel for Respondent No.1:Mr.RAMESH RANGANATHAN

FOR Smt.G.JYOTHI KIRAN

Counsel for Respondent Nos.2 & 3:

WRIT APPEAL No.55 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 21-10-2002 in W.P.No.15652 of 2002 on the file of the High Court.)

Between:

1.Jubilee Hills Labour Welfare Association

(Regd.No.3399/95) rep. by its President, Mr. A.Venkat,

S/o. Late Appala Naidu, Plot No. 265-B, Road No. 10, Jubilee Hills, Hyderabad.

2.S. Ateeq Ahoomed, S/o. S.M.D. Ghouse, Occ: Set Wine Home Services, R/o. 8-3-229/D/114, Baklike Hylam Colony, Venkatgiri, Hyderabad-45.

3.S. Magbook Hussain, S/o. S. A. Rahman, Occ: Electrical Workshop, R/o. H.No. 2-56/1, Chandanayak Nagar, Khanmpet, Madhapur, Hyderabad.

4.R.Eswaramma, W/o. R. Kishanlal,
R/o. 19-2-180/32/A, Nasareddy Colony, Zoopark, Hyderabad.

5. K. Shankar, R/o.Plot No.250, GF, SC Bose Nagar, Mothinagar, Hyderabad.

6. A. Venkat, S/o. Appalanaidu,
R/o. H.No.8-2-265/B, Road No.10, Jubilee Hills, Hyderabad.

7.J. Srinivas, S/o. Rama Rao,
R/o.56, Parvatnagar,Bodabunda, Hyderabad.

8. M.C.Shekar, S/o. Narayana,
H.No.1-10-104/5/10, Begumpet, Allam Thotabhavi, Hyderabad.

9.S. Ramulu, S/o. Balaraju,
R/o.Plot No.250, GF, SC Bose Nagar, Mothinagar, Hyderabad.

10. K. Yadaiah, S/o. Sailaju,
R/o.D.No.95, Jani Jail Singh Nagar, Film Nagar, Hyderabad.

11.J. Ashok, S/o. Pentaiah,
R/o. D.No.G-12, Jani Jail Singh Nagar, Film Nagar, Hyderabad

12. K. Giri Shankar Rao, S/o. Venkata Rao,
R/o. Srisainagar, Ayyappa Society Road, Madhapur, Hyderabad.

13.T. Raghavulu, S/o. Chinnarashavalu,
R/o. H.No.7-1-16/F/N/2, Ameerpet, Behind Petrol Bunk, Hyderabad.

14.V. Raju, S/o. Kannayya ,
R/o.570, Parvatnagar, Allapur, Borabund, Hyderabad.

15.N. Vasanthakumari,
R/o. 13-2-421, Jalihanuman Bookpet, Hyderabad.

16.Ch.Venkat, S/o.Satyanarayana,
Plot No.161, Road No.10, Gayathri Hills Colony, Hyderabad.

17. P.Jangamma, W/o. Sailu,
R/o. G-112, Johi Jaisingh Nagar, Film Nagar, Hyderabad.

18. N. Krishna, S/o..Satyanarayana,
Plot No.C-20, Road No.9, Film Nagar, Hyderabad.

19.T. Raju, S/o.Satyam,
8-3-229/E/24, Near Water Tank, Venkatagiri, Hyderabad.

20.A. Rama Rao, S/o. Anantha Ramayya,
R/o. 8-2-265/B, Road No.10, Jubilee Hills, Hyderabad.

21.M. Ramu, S/o. Ramdas,
R/o. Film Nagar, Behind Congress Party Office, Hyderabad.

22.T. Narayana, S/o. Ramaiah,
R/o. D.No.8-3-229/D/48, Hylum Colony, Venkatagiri, Hyderabad.

23.V. David, S/o. Adam,
R/o.H.No.8-3-229/D38/H4, Hylum Colony, Venkatagiri, Hyderabad.

24.P.Srinu S/o. Satyanarayana
Plot No.14, Jubilee Hills, Road No.10C,Hyderabad.

25. A.Vasantha W/o. Venkateswara Rao
R/o. H.No.8-2-293/32/B/34, Gayathri Hills, Yousufguda, Hyderabad.

26.K. Bhaskar S/o. Satyaiah,
R/o.H.No.8-3-2/229/D/27/H, Hylum Colony, Gate No. 745, Near Venkatagiri,
Hyderabad.

27.N. Yellaiah, S/o. Bala Raju,
R/o. D.No.8-3-229/D 38/H4, Hylum Colony, Venkatagiri, Hyderabad.

28.C. Sarma, H.No.8-2-265/B, Jubilee Hills, Road No. 10, Hyderabad.

29. S.Ferozekhan, S/o.Hussain Khan,
H.No.8-3-603/H/34/1, Banjara Hills Road No.10, Singalakunta, Hyderabad.

30.K. Raju, S/o.Shyam Rao
H.No.2-1-15/A/1, Mahankali Nagar, Shamshinguda, Kukatpalli, Hyderabad.

31.A.Raju, S/o.L.N.Adhikari,
R/o.Plot No.161, Road No.10 Gayathri Hills Colony, Hyderabad.

32. Md. Fayeem, S/o. M.D.Raheem,
R/o. 8-3-663/A, Allinagar, Ameerpet, Hyderabad.

33.S.Kamal, S/o. J.B.Shiva,
R/o.H.No.8-3-299/D/69, HYLUM Colony, Venkatagiri, Hyderabad.

..... APPELLANTS

AND

1.Municipal Corporation of Hyderabad, rep., by its Commissioner, Circle V,
Khairatabad, Hyderabad.

2.Assistant City Planner Municipal Corporation of Hyderabad, Khairatabad,
Hyderabad.

3.Hyderabad Urban Development Authority, Hyderabad rep., by its Chairman.

.....RESPONDENTS

Counsel for the Appellants : Mr.K.R.PRABHAKAR

Counsel for Respondent Nos.1 & 2:Mr.RAMESH

RANGANATHAN

FOR Smt.G.JYOTHI KIRAN

Counsel for the Respondent No.3:

The Court made the following :

ORAL JUDGMENT: (per the Hon'ble the Chief Justice)

These two appeals arise out of common order passed by the learned single Judge on 21st of October 2003 dismissing two Writ Petitions No.15652 and 21961 of 2002. In the writ petitions, direction was sought by the petitioners to declare the action of the respondents in interfering with their day-to-day business and in threatening the petitioners of being evicted from the place where they were carrying on business without issuing any notice as arbitrary and illegal, and further direction to the respondents to forbear to evict them or alternatively to accommodate the petitioners in any other open place to eke out their livelihood. Learned single Judge by reasoned order, considering the stand of the respective parties, dismissed the writ petitions. While dismissing the writ petitions, respondents were directed to give a reasonable time to the petitioners to remove their articles before the structures raised by them are demolished.

At the outset, learned counsel for the appellants pointed out that writ petitions were disposed of on 21-10-2003 and on 22-10-2003, notices were served upon the petitioners-appellants calling upon them to remove the encroachments erected on the road margins from Yousufguda Checkpost to Sri Krishna Nagar and open place near Jubilee Hills Park etc., failing which the respondents threatened to remove the same under Section 405 of Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as 'the Act').

Learned counsel for the appellants further submitted that by the time the appeals

came up for consideration, the petitioners were removed and as of today they are not in occupation of any portion of the land.

Though the learned counsel for the appellants submitted that the petitioners-appellants have no legal right to squat on any road margin, street or pavement, but as the petitioners-appellants were eking out their livelihood for the last several years, and had also paid encroachment charges to the respondent Corporation for compounding the offence of making encroachment, the respondents were bound to provide alternative place to enable the petitioners-appellants to earn their livelihood on the alternative site. In any case, it was urged that having remained at the site for a long time, what was expected of the respondents was to adhere to procedure of giving reasonable opportunity before they were thrown out or before they were asked to remove their belongings.

Learned counsel for the appellants referred to the decisions of the Supreme Court and invited attention of the Court to **Sodan Singh v. New Delhi Municipal Committee, Sodan Singh v. New Delhi Municipal Committee, N.Jagadeesan v. District Collector, North Arcot** and **Sodan Singh III v. NMDC** urging that learned single Judge failed to correctly appreciate the law laid down by the Supreme Court and tried to make out distinction between slum dwellers and pavement dwellers.

We have given due consideration to the submissions made at the Bar, but do not find any ground to countenance the submissions of the learned counsel for the appellants. As a result of decision of learned single judge, the appellants were duly evicted from the pavements and are not in occupation. We only highlight upon the stand taken by the respondent Municipal Corporation in its affidavit stating that the petitioners-appellants are carrying on business on the road margins at Road No.1, Jubilee Hills, and though their business may not be objectionable, but the place of business is objectionable as it is causing hindrance to the traffic. The petitioners-appellants encroached a considerable portion of the road and mere obtaining electricity and telephone connections does not give them any right to establish their business on the road margins which is causing hindrance to the passersby and traffic. As per the revised approved layout, the width of the road is 120 ft., and the present road has to be widened to 120 ft., and in the process, the bunks erected by the petitioners are affected and, therefore, they have to vacate the road margin in

order to widen the road up to 120 ft., as this is one of the important roads of Jubilee Hills where heavy traffic moves every day.

As noticed above, no right is vested in the petitioners-appellants except that they had been squatting on road margins or pavements. In the absence of any legal right vested in them, there will be no right in them even to earn their livelihood on the road margins or pavements. Action of the respondents cannot be faulted with. In view of the stand taken by the respondents that carrying on business by the petitioners-appellants has been causing hindrance to traffic and as per the revised approved layout, the road width is 120 ft. wide and it has to be widened and developed into 120 ft. wide road. The petitioners-appellants are occupying the road margins and therefore, they have to vacate the road margins. It is not shown that the respondents have no right to widen the road or that when road is widened they would not be evicted. In that view of the matter, learned single Judge was justified in dismissing the writ petitions.

When the petitioners-appellants had been squatting on the road, there is power vested under Section 405 of the Hyderabad Municipal Corporation Act for removal of such encroachments without any notice. Learned single Judge, while dismissing the writ petitions, directed the respondents to give reasonable opportunity to enable the petitioners-appellants to remove their belongings and notice to vacate within 24 hours cannot be said to be unreasonable, more especially when the petitioners-appellants under the garb of *status quo* order had been continued to occupy the site in question from 1992 onwards till the date of dismissal of the writ petitions.

We find no merit in the appeals. Dismissed.

_____ (DEVINDER GUPTA, C.J.)

17th November 2004.

(C.V.RAMULU, J.)

ARS

To

- 1.The Commissioner, Municipal Corporation of Hyderabad, rep., by its Circle V, Khairatabad, Hyderabad.
- 2.The Dy.Commissioner of Police, South Zone, Panjagutta,Hyderabad.
- 3.The Chairman, Hyderabad Urban Development Authority, Hyderabad.
- 4.The Assistant City Planner Municipal Corporation of Hyderabad, Khairatabad, Hyderabad.
- 5.Two CD copies.